



LEGAL ADVOCACY UNIT

350 S. Bixel St., Ste. 290

Los Angeles, CA 90017

Tel: (213) 213-8000

Fax: (213) 213-8001

TTY: (800) 719-5798

Intake Line: (800) 776-5746

www.disabilityrightsca.org

February 15, 2019

Board of Supervisors
County of Los Angeles, California
c/o Executive Office of the Board
Kenneth Hahn Hall of Administration
500 West Temple St., Ste. 383
Los Angeles, CA 90012
Sent via email: executiveoffice@bos.lacounty.gov

RE: Letter of Support for Board Motion 19-0940
Phasing Out the Use of Oleoresin Capsicum Spray (OC)
in County Juvenile Facilities
February 19, 2019 Board Meeting, Agenda Item 11

Dear Members of the Board of Supervisors,

We write in support of Board Motion 19-0940, submitted by Supervisors Kuehl and Ridley-Thomas. This motion would result in a plan for the phased elimination of Oleoresin Capsicum spray, also known as pepper spray, in all County camps and juvenile halls before the end of calendar year 2019, and would require the County Probation Department to develop programs and training to better manage behavior in these facilities.

Disability Rights California (DRC) is the protection and advocacy system for the State of California, with authority under Welfare and Institutions Code Section 5900 *et seq.* to advocate for the rights of people with disabilities in California, to monitor their treatment in facilities and to investigate incidents of alleged abuse or neglect. As discussed below, our work includes advocating for the rights of youth with disabilities in juvenile facilities.

The findings of Los Angeles Office of Inspector General (“OIG”) in its February 4, 2019 “Report Back on Ensuring Safety and Humane Treatment in the County’s Juvenile Justice Facilities,” show that the use of pepper spray in county juvenile facilities is excessive and indiscriminate. DRC has found that the use of pepper spray is also highly likely to result in the abuse of and disproportionate harm to young people with disabilities such as mental illness, ADHD and intellectual and developmental disabilities, in violation of state and federal law. We urge the Board of Supervisors to pass Motion 19-0940, which would require the Probation Department to adopt a measured plan to ban the use of chemical agents in all County juvenile institutions.

YOUTH WITH DISABILITIES ARE DISPROPORTIONATELY AFFECTED BY ANY USE OF PEPPER SPRAY

Pursuant to its mandate as California’s protection and advocacy agency, DRC has conducted investigations into conditions in juvenile halls in Kern, San Diego, Fresno and San Francisco and has issued reports on our findings. <https://www.disabilityrightsca.org/what-we-do/topics/adult-and-juvenile-detention-facilities>. These investigations have included a close review of the use of pepper spray, especially as directed towards youth with disabilities. We have found that pepper spray is often directed disproportionately against youth with disabilities and that its use constitutes abuse and neglect of these young people.

For example, DRC conducted an investigation into conditions in the Kern County juvenile facilities and released a report on our findings. Investigation Report: Kern County Juvenile Correctional Facilities, dated January 2018, available from https://www.disabilityrightsca.org/system/files/file-attachments/2018Feb6KCJCReportFinal_Accessible.pdf. We found that excessive use of pepper spray, which in turn creates significant liability for the county. Probation staff “used pepper spray on youth in response to non-violent acts such as verbal defiance and ‘peer friction,’ for symptoms of mental health needs such as self-injury and threats of self-harm, and in a

punitive manner after youth had been restrained.” Most significantly, we found that:

“Youth with disabilities appear to be disproportionately affected by the use of pepper spray in [Kern] facilities. For example, in January 2017, seven of the nine reported pepper spray incidents involved special education students with documented disabilities. Youth with ADHD and bi-polar disorder appear to have been pepper-sprayed for behavior related to their disabilities, over which they have little control. Pepper spray use also disproportionately impacts youth with mental illness and risk of self-injury.”

Following the release of the report, DRC and its co-counsel, Disability Rights Advocates, filed a lawsuit in federal court, *T.G. v. Kern County*, et al., Case 1:18-at-00121, U.S.D.C., E.D. Cal, filed 02/21/18. This lawsuit alleges that Kern County Probation violated the Americans with Disabilities Act and other federal and state laws that prohibit discrimination based on disability through its use of pepper spray, among other policies and practices.

The complaint states that Probation staff use pepper spray “on youth who are nonviolent, youth who are already restrained, youth who are compliant, and youth who are unlucky enough to be in the way. ... This situation is all the more difficult for the many young people with mental health, behavioral, learning, and/or developmental disabilities held in Kern County’s juvenile detention facilities, including many who are survivors of significant trauma. Staff routinely punish these young people – including through the use of isolation, restraint, and chemical force – for behavior related to their disabilities.” DRC and its co-counsel are currently working with the parties to resolve the issues raised in the federal court complaint.

DRC also found that pepper spray was used excessively in the juvenile halls and camps in San Diego County. DRC Report on Inspection of the San Diego Juvenile Detention Facilities, February 23, 2016, available from <https://www.disabilityrightsca.org/system/files/file->

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[attachments/703001_1.pdf](#) Following the release of this report, the new probation chief in San Diego adopted new policies that limit pepper spray use and has engaged national experts to implement broad reform; DRC continues to monitor the effectiveness of these initiatives.

OTHER CALIFORNIA COUNTIES HAVE
SAFELY ELIMINATED THE USE OF PEPPER SPRAY
IN JUVENILE FACILITIES

DRC found that the juvenile facility operated by the City and County of San Francisco operates safely without the use of pepper spray. DRC Report on San Francisco Youth Guidance Center (“YGC”), February 23, 2016, available from https://www.disabilityrightsca.org/system/files/file-attachments/702901_1.pdf. We noted that the facility policies prohibited the use of pepper spray or tasers: “YGC does not use these potentially dangerous interventions on youth, and should be a model for other juvenile facilities in this regard. ... YGC has shown statewide leadership in its elimination of the use of pepper spray.”

As noted in Motion 19-0940, Santa Clara, Solano and Sonoma counties also prohibit the use of pepper spray in juvenile facilities. Additional counties that also ban its use are Santa Cruz, Marin and Sacramento. Los Angeles should follow suit.

CONCLUSION

According to the OIG, “[t]he County should explore the feasibility, with significant input from all stakeholders, of restricting or eliminating the use of OC spray in Department juvenile facilities.” (OIG Report, page 19.) Motion 19-0940 accomplishes this. We urge the Board to pass it.

Sincerely,

Melinda Bird

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Senior Litigation Counsel
Disability Rights California

CC: Terri McDonald, Los Angeles County Chief Probation Officer
Terri.Mcdonald@probation.lacounty.gov;
Mary Wickham, Los Angeles County Counsel
MWickham@counsel.lacounty.gov;
Max Huntsman, Los Angeles County Inspector General
MHuntsman@oig.lacounty.gov;
Board of Supervisors Districts 1-5 Justice Deputies:
EArcidiacono@bos.lacounty.gov; DGarcetti@bos.lacounty.gov;
NAspaturian@bos.lacounty.gov; RKhanna@bos.lacounty.gov;
AYoung@bos.lacounty.gov; MNewell@bos.lacounty.gov